

## Commercial General Terms and Conditions of Sale

**1. Applicability.** These terms and conditions ("Terms") are the only terms that govern the sale of goods or performance of services by Intelligent Manufacturing Solutions ("Seller") to or on behalf of the buyer ("Buyer") and, accompanied with an order, shall comprise the entire agreement between the parties (the "Agreement"). This Agreement supersedes all prior or contemporaneous understandings, representations, warranties, and communications, written or oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer submitted its order or such terms. Fulfillment of Buyer's order does not constitute acceptance of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### 2. Delivery and Shipping Terms.

(a) Goods or services will be delivered or performed within lead time after receipt of Buyer's order. Seller is not liable for any delays, loss or damage in transit. Unless otherwise agreed in writing, Seller shall deliver goods FCA (Incoterms 2020) Seller's facility, Londonderry, NH (the "FCA Point") using Seller's standard methods for packaging.

(b) Buyer shall take delivery of the goods promptly after receiving notice that the goods have been delivered to the FCA Point. If for any reason Buyer fails to accept delivery of goods on the delivery date or if Seller is unable to deliver goods on the designated delivery date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods and Buyer shall be liable storage costs.

(c) Where deliveries are to be made in one or more installments, each installment shall constitute a separate agreement and shall be paid for in accordance with the terms hereof. Failure to deliver any part of the installment shall not relieve Buyer from the obligation to accept and pay for other deliveries and installments under this Agreement.

(d) Unless expressly prohibited in writing by Buyer, early delivery of goods is authorized, and such goods shall be packed, marked, and shipped using Seller's standard methods for packaging.

**3. Quantity.** If Seller delivers to Buyer a quantity of goods different than the quantity set forth in the Agreement, Buyer may not object to or reject the goods or any portion of them by reason of the surplus or shortfall and shall pay for such goods the price set forth in the Agreement.

**4. Title and Risk of Loss.** Title and risk of loss passes to Buyer upon loading of goods at the FCA Point, unless otherwise expressly and specifically provided for in writing by Seller or 2(b) applies.

### 5. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the goods within five days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes documentation reasonably required by Seller. "Nonconforming Goods" means only: (i) goods that do not comply with the technical specifications of the Buyer's order; or (ii) the goods' label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming goods or (ii) credit or refund the Price for Nonconforming Goods. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Nonconforming Goods from Buyer, ship to Buyer the replaced goods at Seller's expense.

(c) The remedies set forth in Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided in Section 5(b), Buyer has no right to return goods purchased under the Agreement.

**6. Price.** Buyer shall purchase the goods or services from Seller at the prices (the "Price") set forth in Seller's quoted price. All Prices are inclusive and

encompasses any and all United States federal, state, or local taxes. Foreign taxes and duties that may be applicable and any or all license or use fees are not included in price unless otherwise stated in writing. At its discretion, Seller shall charge a tariff price adjustment for any tariff imposed after the order date that directly or indirectly affects the price of ordered goods. The tariff price adjustment shall be invoiced as a separate line item.

**7. Payment Terms.** Unless the parties otherwise agree, Buyer shall pay all invoiced amounts to Seller net 30 days from the date of Seller's invoice. Unless the parties otherwise agree, Buyer shall make all payments by check, in U.S. dollars. Buyer shall pay interest on late payments at 2% per month, calculated daily as of the day after which the payment was due, and compounded monthly. Buyer shall reimburse Seller for costs incurred in collecting late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller is entitled to suspend the delivery of any goods or services if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due by reason of any set-off of a claim or dispute with Seller.

**8. Changes.** If Buyer requests any changes, by written notice, after an Agreement is entered into, such changes must be approved by Seller's written agreement. Buyer shall be responsible for all costs associated with any such changes. Buyer's purchasing point of contact is the only authorized individual who can request such changes, which will be incorporated as written amendments to the Agreement after approved by Seller. Any information or instructions offered by technical representatives of Buyer shall be considered personal opinions of the employee providing the information or instructions and shall not serve as request for modification, waiver, or change in any of the requirements of the Agreement.

### 9. Discontinued and/or Obsolete Components.

(a) When any component part(s) required by Seller to complete the manufacture and/or delivery of any items proposed herein becomes obsolete, discontinued or a sole source vendor discontinues selling, Seller shall be entitled to an equitable adjustment to the Contract for any cost and/or schedule impact caused by the effect of the discontinued, unavailable, and/or obsolete component.

(b) In the event that Seller receives notification from a last known vendor or otherwise becomes aware that a component has or will be discontinued, Seller shall notify the Buyer. Seller shall also propose corrective action, which may include any of the following: (i) an end-of-life buy of the component in sufficient quantities to fulfill the requirements of the contract, (ii) a compatible replacement component, or (iii) a redesign of the next higher assembly to replace the component. Said Quotation shall recite price impacts, if any. Upon receipt of any such notifications, Buyer shall promptly review and approve the recommended corrective action and price. Such approval shall not be unreasonably withheld. Approval of any action to be taken by Seller shall be issued as a modification to the Agreement and shall include an equitable adjustment to price and/or schedule, as appropriate.

**10. Buyer Caused Delay** If the performance of all or any part of the work of this Agreement is delayed or interrupted by an act of the Buyer that is not expressly authorized in writing, an adjustment shall be made for any increase in the cost/price and period of performance of this Agreement caused by the delay or interruption. Seller's claims for adjustments shall be asserted in writing as soon as practicable, and the Agreement modified accordingly in writing, prior to delivery of the goods or services.

### 11. Limited Warranty.

(a) Seller warrants to Buyer that for a period of one year from the date of delivery of the goods or performance of service ("Warranty Period") such goods and services will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.

(b) THE WARRANTIES, OBLIGATIONS AND LIABILITIES, EXPRESS OR IMPLIED, AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF



BUYER SET FORTH IN THE AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS; ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY ARISING FROM THE NEGLIGENCE OF SELLER; AND ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OR DAMAGE TO ANY THIRD PARTY PROPERTY OR PRODUCTS.

(c) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the goods. Third Party Products are not covered by the warranty in Section 10(a), and for the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT.

(d) Seller is not liable for breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within the Warranty Period and within ten days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving notice to examine the goods or services and Buyer (if Seller requests) returns such goods or services to Seller's facility at Seller's cost for such examination; and (iii) Seller reasonably verifies Buyer's claim that the goods or services are defective.

(e) Seller is not liable for breach of the warranty set forth in Section 10(a): (i) if Buyer makes any use of the goods or services after giving notice; (ii) if the defect arises because of failure to follow Seller's instructions as to storage, installation, use or maintenance of the goods; (iii) if the goods are altered or repaired without Seller's prior written consent; or (iv) for defects caused by negligence, abuse or misuse of the goods, corrosion, fire, heat or normal wear and tear.

(f) Subject to Sections 10(d) and (e), with respect to any such defective goods or services during the Warranty Period, Seller shall, in its sole discretion, 2 either: (i) repair or replace such goods (or the defective part) or reperform the services or (ii) credit or refund the price of such goods or services at the pro rata Price but, if Seller requests, Buyer shall, at Seller's expense, return such goods, or services if applicable, to Seller.

(g) In the event repairs are required under this clause 10, the Seller warrants such repairs for a period of ninety (90) days from the delivery date of the repaired goods. Seller provides no warranty for the incidental materials and consumable utilized in performance of any repair. Seller shall not be responsible for the removal or replacement of systems, structures, or other portions of the Buyer's end product.

(h) THE REMEDIES SET FORTH IN SECTION 10 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTY IN SECTION 8(a).

## 12. Intellectual Property.

(a) For the purposes of this Agreement, "Intellectual Property" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (i) all patents and applications therefor throughout the world, and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (ii) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (iii) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) all industrial designs and any registrations and applications therefor throughout the world, (v) all trade names, logos, URLs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; (vi) all databases and data collections and all rights therein throughout the world, and (vii) any similar or equivalent rights to any of the foregoing anywhere in the world.

(b) Each Party is and shall remain the owner of all Intellectual Property that it owns or controls as of the Effective Date. Unless otherwise agreed to by the Parties in writing, Intellectual Property developed or acquired by SELLER in performance of this Agreement shall be solely owned by SELLER.

**13. Right of Access.** Seller expressly denies Buyer the right of access to any data and records, including financial records, associated with this Quotation or resulting Agreement. If required by the FAR, Buyer shall request an assist audit through DCMA or a mutually agreed upon third party auditor. Buyer's Right of Access to facility will be at Seller's sole discretion and shall not interfere with the normal flow of business.

**14. Indemnification.** Seller expressly rejects any and all indemnification and/or hold harmless provisions of Buyer and/or Buyer's customer or any other third party.

## 15. Limitation of Liability.

(a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO NONCONFORMANCE OR DEFECT IN GOODS OR SERVICES OR ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER FOR THE GOODS SOLD OR SERVICES PERFORMED.

**16. Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances and maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement, including, but not limited to, all export and import laws of all countries involved in the sale of the goods under the Agreement or any resale of the goods by Buyer. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Buyer shall be responsible for all losses, damages, liabilities and costs, including attorney's fees and court costs, arising from any action or omission, regardless of intent, of Buyer or any related party including employees, suppliers, and subcontractors at any tier, in the completion of Buyer's obligations under this clause.

**17. Termination.** In addition to any remedies set forth herein, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Under no circumstances may Buyer terminate any order without written agreement from Seller. Buyer shall be responsible for all costs associated with any such termination

**18. Order of Precedence.** Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) Agreement (Excluding exhibits or attachments)
- (b) Agreement Exhibits or Attachments in the following order:
  - i. These Terms and Conditions
  - ii. Other Contract clauses.
  - iii. Other documents, exhibits, and attachments.
  - iv. The specifications.



**19. Confidential Information.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation hereof. This Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) obtained by Buyer on a non-confidential basis from a third party who was not under an obligation of confidentiality.

**20. Force Majeure.** Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Seller’s reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. If, due to any such circumstances, shortages should occur in Seller’s supply of any specific goods, Seller may allocate deliveries to its customers as is determined by law or in Seller’s sole discretion.

**21. Amendment and Modification.** These Terms may only be amended or modified in a writing that specifically states that it amends these Terms and is signed by each party.

**22. Waiver.** No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**23. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without Seller’s prior written consent. Any purported assignment or delegation in violation hereof is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

**24. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has authority to contract for or bind the other party in any manner whatsoever.

**25. No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**26. Governing Law and Jurisdiction.** The Agreement shall be governed by the laws of the State of Delaware, USA, excluding its conflict of laws principles. The parties agree, consent and waive contest to the exclusive jurisdiction and venue of the federal or state courts of New Hampshire for all disputes arising out of or relating to this Agreement. The United Nations Convention on the International Sale of Goods does not apply to any matter arising out of or relating to the Agreement. To the extent applicable to the Agreement, the provision of the Federal Acquisition Regulations (FAR) and other applicable federal and state regulations apply to this proposal, including but not limited to the Dodd- Frank Act, the US Export Administration Regulations (EAR), and the International Traffic in Arms Regulations (ITAR).

## **27. Disputes.**

(a) All dispute resolution under any resulting Agreement will be resolved first through good faith negotiations between the Buyer and Seller (referred to individually or collectively as “Party” or “Parties”) and only failing such demonstrated good faith negotiation will the dispute be handled through binding arbitration. The Parties will use their commercially reasonable best efforts to avoid and resolve any disagreements, amicably. Before demanding arbitration hereunder, said Party shall give the other Party written notice and a thirty (30) calendar day opportunity for the Parties to resolve the dispute.

(b) Any dispute arising out of or related to an Agreement which cannot be so resolved shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. The Arbitration shall take place in Melbourne, Florida or any other location mutually agreed to by all the Parties. The Parties shall attempt to agree on a single arbitrator. If the Parties cannot agree upon a single arbitrator within fourteen (14) days of nomination of prospective arbitrators in writing to the other Party, then each of the Parties shall appoint one arbitrator. The two arbitrators shall select a third arbitrator, and the three arbitrators shall select a single arbitrator to hear and decide the dispute.

(c) The arbitration shall be conducted in English. All documents used by either Party shall be in English with the Party offering the document solely responsible for providing an English language version.

(d) The arbitrator’s decision shall be made in writing signed by the Arbitrator. The arbitration decision shall be final, irrevocable and enforceable in Buyer’s country and the United States or any other country having jurisdiction over the Parties. Each Party shall bear its own costs and expenses and an equal share of the arbitrators’ and administrative fees of arbitration. All arbitration proceedings and documentation shall be conducted in English. The arbitrator(s) shall not have authority to order punitive, incidental, consequential or exemplary damages.

**28. Notices.** Each notice, request, consent, claim, demand, waiver and other communication hereunder (each, a “Notice”) must be in writing and addressed to the parties at the addresses set forth on the face of the order, quotation or confirmation of sale accompanying these Terms or to such other address that the receiving party may designate in writing. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (i) upon receipt of the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

**29. Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**30. Survival.** Provisions of these Terms that by their nature should apply beyond the Agreement will remain in force after any termination or expiration of the Agreement including, but not limited to, the following: Warranty, Disputes, Compliance with Laws, Confidentiality, Governing Law and Jurisdiction, Payment Terms, and Survival.

**31. Cybersecurity Maturity Model Certification (CMMC).** SELLER has achieved CMMC level 1 compliance and is actively working towards achieving Level 2 compliance.